

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1710 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

RAJNIKANT RASIKLAL NAGRI

Versus

UNION OF INDIA

Appearance:

MR SN SOPARKAR for Petitioner

MR B.B.NAIK WITH MRMANISH R BHATT for Respondent No. 1, 2

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 26/11/98

ORAL JUDGEMENT

The petitioner raises threefold grievance in this petition. One is against the order passed by the appropriate authority under section 269UD of the Income tax Act . While making the order of compulsory purchase

of the property in question, the appropriate authority determined the amount of consideration payable to the petitioner by reducing the apparent consideration stated in the agreement to sell in terms of rule 48-I of the rules. The petitioner has also a grievance that in determining the amount payable to the petitioner, as consideration for purchase, he has not taken into account the compensation which was payable to the petitioner under the Urban Land Ceiling Act inasmuch as part of the land was under consideration to be acquired under the said Act being excess of ceiling limit. Secondly, it was urged by the learned counsel for the petitioner that while making payment of consideration fixed by the appropriate authority, the respondents have wrongly adjusted the amount outstanding against the petitioner on account of wealth tax demands amounting to Rs. 87,748/relating to assessments years 1983-84 to 1991-92.

We heard the learned advocates for the purpose. So far as deduction from the consideration disclosed in the agreement to sell which is foundation for operation of Chapter XX-C and is to be basis for order of purchase being made under section 269UD with reference to provisions of the said Act, this court has taken the view that discounting of apparent consideration for deferred payment is permissible deduction. Reference in this connection may be made to

(1) Pradip Ramanlal Sheth vs Union of India, 204 ITR 866;'

(2) Sanjay Chandrakant Raval vs. Union of India, 219 ITR 748 and

(3) Shantaben Ratilal vs. Appropriate authority, 212 ITR 95.

In view of the aforesaid, the contention of the learned advocate for the petitioner to the extent which relates to discounting of apparent consideration is not sustainable.

The plea about awarding additional payment on account of the petitioner's entitlement to compensation payable under the Urban Land Ceiling Act is devoid of any substance. Firstly, the land can vest in the State only once. If the land has been acquired by purchase under the provisions of sections 269-UD, there cannot be a second vesting of the property under the said Act entitling the petitioner to claim any further compensation under the said Act. Secondly, the petitioner cannot be entitled to

compensation twice over for the same piece of land, the petitioner having disclosed consideration for which he has agreed to sell the property on receipt of which he would have lost title to it in favour of the vendor. The provisions of Chapter XX-C places Union of India in the status of preemptor who gets the property on the same terms on which property is sought to be transferred to the other. He cannot ask for anything more.

Thirdly, anything more than what has given by the State on vesting of the property is in lieu of all right, title and interest of owner in the land. In case, the petitioner is satisfied with the sum which is admissible under the Urban Land Ceiling Act, he cannot lay any claim on that part of the land which is liable to be acquired under the Act by deduction of compensation under the Act and to that extent, apparent consideration on the plea of the petitioner's case which reduces rather than enhances the compensation that the petitioner may be expecting under the ULC Act. We are, therefore, of the view that there was no room for considering the petitioner's claim for additional compensation which might have been payable under the ULC Act in respect of whole or any part of the land.

Coming to the third contention also, we are of the view that the same cannot be accepted. The amount of outstanding wealth tax dues was liability of the petitioner which he owed to the Union of India. If Union of India claims any amount which becomes payable to it by the petitioner, it is entitled to adjust the amount due to it from amount payable by it and only pay remainder of it, subject of course to the dispute about liability to pay that amount that may be pending between the parties. This, on the first principle. Even otherwise, the rules permit such deduction. We, therefore, find no force in this petition which is dismissed. Rule is discharged. There shall be no order as to costs.

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